

SPECIAL CIVIL APPLICATION No 85 of 1989

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order maJJJJJ

NARAYANBHAI A PARIKH

STATE OF GUJARAT

MR.LR POOJARI, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India arises under the following circumstances :

The Collector, Banaskantha district by his order dated 14.10.1964 and 23.11.1976 granted lands to the Government servants' Cooperative Society, Palanpur on certain conditions. The petitioner was allotted a plot in the said society and he constructed a house thereon. The petitioner retired as Mamlatdar and since his son was settled at Ahmedabad he wanted to sell the said house. He therefore made an application to the Collector on 28.10.1985 for permission to sell the house together with the land to one Smt. Kanchanben Ratilal. The Collector by his order dated 4.12.1987 (Annexure 'C') granted permission on certain conditions. The first condition was that the petitioner will have to pay 50% of the difference between the original price and the market price at the rate of 175/- per sq.mt. or such price as may be determined by the Deputy Town Planner, Mehsana on the date of the order. The petitioner was therefore required to pay the premium initially on the basis that the market price was Rs.175/- on condition that if price determined by the Deputy Town Planner was higher than Rs.175/- per sq.mt. the petitioner will have to pay the difference within 21 days.

On 17.2.1988, the Collector addressed a communication to the petitioner intimating that the Deputy Town Planner had fixed the price of the land at Rs.300/- per sq.mt. and accordingly the petitioner was required to pay Rs.10,937.50 ps.being additional amount of premium within 21 days failing which the permission to sell shall stand cancelled.

Being aggrieved by the said order calling upon the petitioner to pay additional premium the petitioner filed revision application u/s.211 of the Land Revenue Code before the Secretary (Appeals) Revenue. The Secretary (Appeals), Revenue by his order dated 9.9.1988 dismissed the revision application and confirmed the order of the Collector dated 17.2.1988.

The petitioner thereupon filed the present petition under Article 226 of the Constitution.

Mr.P.J.Vyas, learned Counsel for the petitioner contended that the petitioner had made application for permission on 28.10.1985 and merely because the order granting permission was made on 4.12.1987 the petitioner cannot be required to pay price as on the date of the

order. However, when the order was made the petitioner accepted the same and there was no challenge to the same. There was no compulsion on the petitioner to accept the same. However, the petitioner chose to pay premium initially on the basis that the price was Rs.175/- as stipulated in the order granting permission and thereby also accepted the condition that he would pay the difference in case the price determined by the Deputy Town Planner was higher than Rs.175/- per sq.mt. In the circumstances, there is no warrant for interference with the order made by the Collector in exercise of writ jurisdiction under Article 226 of the Constitution. The petition is therefore dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

m.m.bhatt